

**EXHIBIT 68**

**EXHIBIT 2 - EXYTE'S FOIL REQUEST**

# EXHIBIT 2

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**From:** Nohelty, Alex  
**Sent:** Wednesday, July 5, 2023 3:55 PM  
**To:** Hochberg, Benjamin J.  
**Subject:** FW: FOIL Records Request :: R000047-040323

**Alex Nohelty**  
Associate | **Peckar & Abramson, P.C.**  
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**From:** NYS Empire State Development <[esdny@govqa.us](mailto:esdny@govqa.us)>  
**Sent:** Monday, April 3, 2023 5:14 PM  
**To:** Nohelty, Alex <[ANohelty@pecklaw.com](mailto:ANohelty@pecklaw.com)>  
**Subject:** FOIL Records Request :: R000047-040323



**Empire State  
Development**

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Dear Alexander Nohelty:

This message acknowledges receipt of your request. Your request was received in this office on 4/3/2023 and given the reference number R000047-040323 for tracking purposes.

Records Requested: • All documents and communications transmitted or exchanged with Athenex, Inc. ("Athenex") concerning the Capital Grant Agreement entered into in or around September 2017 with the New York State Urban Development Corporation d/b/a Empire State Development Corporation ("ESDC") (the "Capital Grant Agreement"). • All documents and communications transmitted or exchanged between Athenex, ImmunityBio, Inc. ("IMB"), and ESDC concerning work performed, or to be performed, at the site located at 3805 Lake Shore Drive East, Dunkirk, NY 14048 (the "Project"). • All documents and communications transmitted or exchanged with IMB concerning IMB's assumption of Athenex's rights and responsibilities under the Capital Grant Agreement pursuant to a purchase agreement between Athenex and IMB originally dated as of January 7, 2022, whereby Athenex transferred and assigned to IMB its rights, duties and obligations arising from various agreements for the construction of the Project (the "Purchase Agreement"). • All documents and communications pertaining to or evidencing ESDC's consent to the Purchase Agreement. • All documents and communications transmitted or exchanged with IMB concerning the Purchase Agreement. • All documents and communications transmitted or exchanged with Athenex concerning the Purchase Agreement. • All records, documents, and communications concerning grant funds earmarked for the Project prior to February 14, 2022. • All records, documents, and communications concerning grant funds earmarked for the Project on or following February 14, 2022. • All documents and communications transmitted or exchanged between ESDC and Athenex concerning Athenex's rights and responsibilities under the Capital Grant Agreement, preconditions to the receipt of

funds, requirements regarding how funds are/were to be disbursed, substantiating documentary evidence provided to ESDC in connection therewith, and any and all negotiations relating thereto. • All documents and communications transmitted or exchanged between ESDC and IMB concerning IMB's rights and responsibilities under the Capital Grant Agreement, preconditions to the receipt of funds, requirements regarding how funds are/were to be disbursed, substantiating documentary evidence provided to ESDC in connection therewith, and any and all negotiations relating thereto. • All records, accounts, communications and other documents evidencing any and all payments, disbursements, and grant funds paid to either Athenex or IMB pursuant to the Capital Grant Agreement. • Any and all requisition requests received by ESDC from Athenex or IMB in connection with the performance of the Capital Grant Agreement and all communications transmitted or exchanged between the parties relating thereto. • ESDC's complete project file concerning the Project including, but not limited to, all grant funds paid pursuant to the Capital Grant Agreement, all documents held or maintained by ESDC concerning construction activities at the Project, and all communications relating thereto. • Monthly account summaries and/or statements of account from any bank account(s) used or maintained by ESDC to transmit grant funding to Athenex and/or IMB showing any payments made, funding provided, and withdrawals initiated, in connection with the Capital Grant Agreement, including transaction dates and amounts. • All communications and documents transmitted or exchanged between ESDC and Athenex concerning the parties' performance under the Capital Grant Agreement. • All communications and documents transmitted or exchanged between ESDC and IMB concerning the parties' performance under the Capital Grant Agreement. • Any and all documents and communications received by ESDC concerning Exyte U.S., Inc. ("Exyte"), Athenex and/or IMB's agreement(s) with Exyte to perform work at the Project, Exyte's work at the Project, the progress of Exyte's work at the Project, funds paid in exchange for Exyte's work (whether or not requested, in whole or in part, from ESDC), funds required to pay for Exyte's future work (whether or not requested, in whole or in part, from ESDC), and all requisition requests (including all other Project-related documents and/or communications) received by ESDC. • To the extent not otherwise provided, any and all documents regarding construction activities and related payments by ESDC for the Project.

We will provide you with a status update on or before 5/2/2023.

You can monitor the progress of your request at the link below and you'll receive an email when your request has been completed.

New York State Empire State Development

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To monitor the progress or update this request please log into the [FOIL Records Access Center](#)

